

Appl. No. 10/757,629  
 Atty. Docket No. 8194C  
 Andt. dated August 2, 2005  
 Reply to Office Action of May 3, 2005  
 Customer No. 27752

### REMARKS

Claims 1-10 are pending in the present application. No additional claims fee is believed to be due.

Claims 2, 3, 6 and 7 have been cancelled without prejudice.

Claims 1, 4 and 5 have been amended to more specifically characterize the present invention.

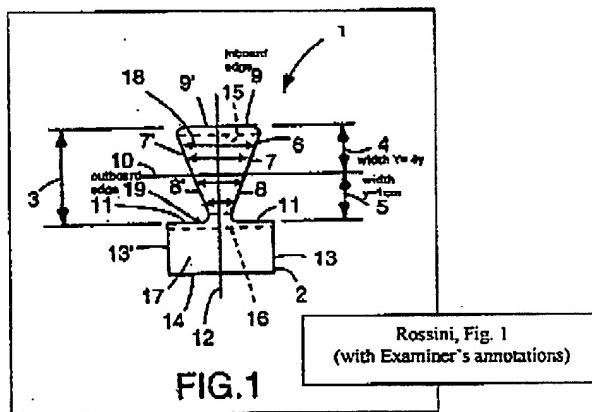
In addition, new claims 11-15 have been added.

Claims 1, 4-5 and 8-15 remain in the present application.

### Rejection Under 35 USC §102 Over Rossini et al. (US 5,312,387)

In the subject Office Action, claims 1-9 were rejected under 35 U.S.C. 102(b) as being anticipated by Rossini et al. (US 5,312,387). More specifically, in rejecting claims 1, 2 and 9, the Office Action states:

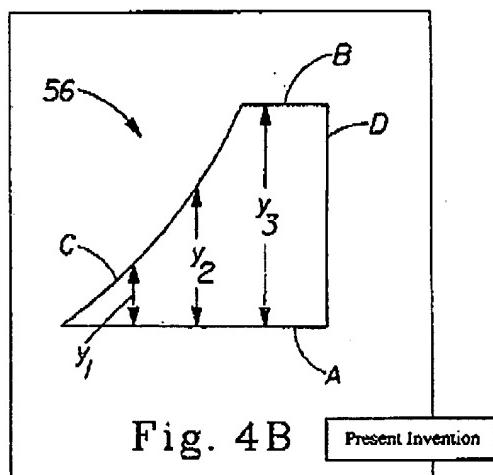
*Regarding claims 1-2 and 9 Rossini et al. discloses a diaper fastening tab 1 having a bond end 2 joined to article side edge and a free end 3 with a fastening surface 18, the fastening tab 1 having an effective dimension Y extending parallel to a longitudinal axis, the effective dimension Y increasing from a laterally outward edge 19 to a laterally inward edge 9 of the first surface, wherein the surface fastening system has peel maximum/different levels of resistance to disengagement at the distal half 4 of free end 3 (col. 2, II. 31-39, 43-47, col. 4, II. 1-8 and figure 1).*



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Based on the Examiner's annotations above, it is believed that the Applicants' original use of the claim terms "laterally outboard edge, laterally inboard edge, longitudinally outboard edge, longitudinally inboard edge" might have inadvertently caused some confusion. As such, to more specifically characterize the present invention, Applicants have herein amended said claim terms to "proximal edge, distal edge, upper edge, lower edge", respectively. Said claim terms find support within the Specification (e.g., page 14, lines 19-30) and Drawings (e.g., FIGS. 1 and 2).

As these amended claim terms are applied to Rossini, Applicants respectfully assert that Rossini does not teach an effective dimension Y that increases from a distal edge to a proximal edge; in fact, Rossini discloses just the opposite (see above). In contrast, Figure 4B of the present invention teaches such claim limitation.



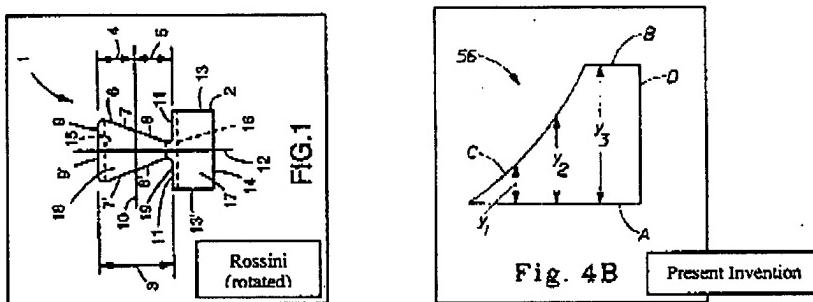
Based on the above arguments and the amendments made herein, Applicants respectfully assert that currently-amended claim 1 is now allowable. Further, since claims 2-10 depend from claim 1, they are similarly allowable.

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*In rejecting claims 3 and 4, the Office Action states:*

*Rossini et al. discloses a fastening element with a longitudinally inboard edge 9 longer than longitudinally outboard edge 19 (fig. 1).*

Applicants have herein cancelled claim 3 without prejudice. Additionally, Applicants respectfully assert that newly-amended claim 4 (i.e., lower edge being longer than the upper edge) is not taught nor disclosed by Rossini as immediately observable by the rotated figure below. Instead, Rossini teaches just the opposite.



In rejecting claim 5, the Office Action states:

*Regarding claim 5 Rossini et al. discloses inboard edge 9 having free end 3 being unjoined from the article (col. 2, ll. 43-45 and fig. 1).*

Applicants respectfully assert that newly-amended claim 5 more clearly characterizes such an exemplary embodiment of the present invention wherein the second fastening element contains a portion which may be unjoined from the underlying structure of the article (see page 18, ll. 26-34 and Figs. 6-8). Such claim language describes the physical connection, or lack thereof, between the second fastening element and underlying structure. Said claim language is not directed to an unjoined portion between the first and second fastening element (e.g., hook and loop connection). The Office Action's reliance upon "free end 3" demonstrates this confusion. Applicants respectfully assert that the claim amendment made herein makes clear the intended claim scope. Further, Applicants respectfully assert that newly-amended claim 5 is now allowable.

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In rejecting claims 6 and 7, the Office Action states:

*Regarding claims 6-7 Rossini et al. discloses the tab free ends provide improved peel force resistance, minimizing the potential for inadvertent fastening tab removal (col. 4, II. 9-14). Rossini et al. further discloses examples where the peak load in a direction other than the direction of primary load bearing to be 940-1405 gm with a 90 degree peel (col. 4, table I and col. 5, table II).*

Applicants have herein cancelled claims 6 and 7 without prejudice. Further, Applicants have herein added new claims 11-15 to more specifically characterize the present invention. Applicants respectfully assert that Rossini does not teach nor disclose the discoveries relating to peak peel loads when measured subject to forces in a y'z-plane through y"z plane. As such, Applicants respectfully assert that new claims 11-15 are allowable.

In rejecting claim 8, the Office Action states:

*Regarding claim 8 Rossini et al. discloses an article with a Y-increasing fastening system dimension to be used on a diaper, said diaper would inherently contain an absorbent member chassis for absorbing body exudates. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose nor render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 1 90F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).*

Since newly-amended claim 1 is now allowable, and since claim 8 depends from claim 1, Applicants respectfully assert that claim 8 is similarly allowable.

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Rejection Under 35 USC §103(a) Over Rossini et al. (US 5,312,387)

In the subject Office Action, claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Rossini et al. (US 5,312,387). More specifically:

*Rossini et al. discloses a fastening surface 18 will adhere/attach to a suitable surface on the front or frontal portion of the diaper/pant-like article (col. 2, ll. 37-40). Rossini et al. does not expressly disclose the fastening elements form a waist opening and a pair of leg openings. It would be obvious to one of ordinary skill in the art at the time the invention was made the Rossini et al. diaper contain first and second fastening elements that attach to form a waist opening and a pair of leg openings since it is well known that diapers contain a waist opening, leg openings, and a means of attaching the article to the wearer.*

Since newly-amended claim 1 is now allowable, and since claim 10 depends from claim 1, Applicants respectfully assert that claim 10 is similarly allowable.

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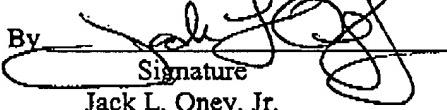
Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. 102 and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of claims 1, 4-5 and 8-15 is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By   
\_\_\_\_\_  
Signature

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